

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 255 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
2 to 5 : No

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COMMISSIONER OF INCOME TAX

Versus

SHANTILAL M SHAH

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Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner  
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 07/04/99

ORAL JUDGEMENT (per A.R. Dave, J.)

At the instance of the revenue, the following two questions have been referred to this Court by the Income Tax Appellate Tribunal, Ahmedabad Bench A, under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act).

"1. Whether, on the facts and in the circumstances of the case, the appellate tribunal has been right in law in holding that the share of profit in the name of assessee's wife, Smt. Manekben from the firm of M/s. Loomdrop Pin Mfg. Co. in which the assessee was a partner representing his HUF is not includible in the income of the assessee individual u/s 64(1)(i) of the I.T. Act, 1961?

2. Whether the Appellate Tribunal has been right in law in confirming the order of A.A.C. in deleting the addition of Rs., 75,553/- made by the I.T.O. by invoking the provisions of sec. 64(1)(i) of the I.T. Act, 1961?"

2. The respondent assessee, in his capacity as a karta of his H.U.F., was a partner in a firm named M/s. Loomdrop Pin Mfg. Co. Wife of the respondent was also a partner in the said firm. Invoking the provisions of sec. 64(1)(i) of the Act, the ITO clubbed income of the wife accruing from the firm in the income of the respondent assessee. Being aggrieved by the said order, the respondent assessee had filed an appeal before the AAC who held that as the respondent assessee was a partner representing his HUF and as he was not a partner in his capacity as an individual, provisions of sec. 64(1)(i) of the Act could not have been invoked by the ITO and he deleted addition of Rs.. 75,553/- made by the ITO and decided the appeal in favour of the respondent assessee.

3. Being aggrieved by the above-referred order passed by the AAC, the revenue had filed an appeal before the Tribunal. The Tribunal confirmed the view taken by the AAC.

4. In the above-referred circumstances, at the instance of the revenue, the questions referred to hereinabove have been referred to by the Tribunal to this Court for its opinion.

5. This Court, in the case of Dinubhai Ishvarlal Patel v. K.D. Dixit, Income-tax Officer, Ahmedbad and others, 118 ITR 122, had an occasion to deal with a similar question in a writ petition where income of the son from a partnership firm was added in the income of the father who was a partner in his capacity as a karta

of the HUF in the said firm. This Court held that where the assessee is a partner in a partnership firm in his capacity as a karta of an HUF, the share of income received by his wife or minor children as partners of the firm cannot be included in the income of the assessee as the word "individual" must be confined to a person who is being assessed in his individual capacity and not in any other capacity. The view referred to hereinabove of this Court expressed in the case of Dinubhai Ishvarlal Patel (supra) was later on confirmed by the Apex Court in the case of CIT and others v. Om Prakash and others, 217 ITR 785. It has been observed by the Apex Court that income received by a karta as a partner in the firm would not become his individual income and therefore income of the wife or the minor children arising from their membership/admission to the benefits of the partnership firm cannot be included in the income of the individual who is a partner in his capacity as karta of the HUF.

6. The case with which we are concerned at present pertains to inclusion of income of the wife in the income of the respondent assessee, who was a partner in the firm in his capacity as a karta of his H.U.F. and not in his individual capacity. The ratio laid down in the judgment referred to hereinabove will squarely cover the present case because in the instant case income of the wife has been included in the income of the husband whereas in the case of Dinubhai Patel (supra), income of the minor son was included in the income of the father, who was not a partner in his individual capacity but was a partner in his capacity as a karta of his H.U.F.

7. In view of the above-referred clear legal position, both the questions referred to this Court are decided in affirmative, i.e., against the revenue and in favour of the assessee.

The reference is answered accordingly with no order as to costs.

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